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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,713	02/17/2000	Wilfried Jud		6931

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Fisher Christen & Sabol
1725 K Street NW
Suite 1401
Washington, DC 20006

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1773

, DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/505,713

Applicant(s)

JUD ET AL.

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/4/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. The amendments filed 12/4/02 and 12/13/02 have been entered. Claim 54 has been canceled. Claims 38-53 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The objections to the specification as recited in paragraph 4 of the prior office action have been obviated by the amendment filed 12/4/02 and hence the objections have been withdrawn.
4. The rejections of Claim 54 as recited in paragraphs 6-7 of the prior office action have been obviated by the cancellation of Claim 54.
5. The terminal disclaimer filed on 12/4/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/083,110 has been reviewed and is accepted. The terminal disclaimer has been recorded.
6. The provisional double patenting rejection over co-pending application 10/083,110 has been obviated by the proper filing of a terminal disclaimer and hence the double patenting rejection has been withdrawn.

Claim Rejections

7. Claims 38-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Breitler et al (USPN 5,589,275) for the reasons recited in the prior office action and stated in detail in Paragraph 3 of Paper No. 11.

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8. Claims 38-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breitler et al in view of *Ullmann's Encyclopedia of Industrial Chemistry* for the reasons recited in the prior office action and stated in detail in paragraph 4 of Paper No. 11.

Response to Arguments

9. Applicant's arguments filed 12/4/02 have been fully considered but they are not persuasive. The Applicant continues to argue that the Examiner's interpretation of Breitler et al is incorrect, that nowhere does Breitler et al disclose a polypropylene layer between a metal layer and a polyamide layer, and that the recitation at Col. 4 of Breitler et al only teaches polypropylene layers on the outer sides of the composite and not the outer sides of the polyamide layer and hence between the polyamide layer and the metal layer. However, as previously stated in Paper No. 14 and Paper No. 16, the Examiner maintains her position with regards to Breitler et al and specifically points to lines 36 to 44 of Column 4 of Breitler which read:

"A single or double-sided sealable composite is obtained by single or double sided coextrusion of the plastic layers with e.g. a polypropylene/polyethylene copolymer.

In that connection it is useful for the plastic layers to contain or comprise of a polyamide-based thermoplastic to feature a sealing layer on at least one side i.e. each layer of polyamide-based thermoplastic may be covered with a sealable layer on one or both sides, independent of the other layers." (Emphasis added.)

Below the Examiner has included her previous statements presented in Paper No. 14:

"This recitation clearly states that **each layer** of polyamide may be provided on **one or both sides** with a sealable layer, or polypropylene per Col. 4, line 24, independent of the other layers, **not** that each layer of polyamide may be provided **only on one side** with a sealable layer

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such that the composite is provided with an outerlying sealable layer on one or both sides as interpreted by the Applicant. Hence, the Examiner maintains her position that the invention taught by Breitler et al does in fact teach the instantly claimed invention having the structure polyamide plastic layer/metal layer/polyamide plastic layer wherein **each polyamide plastic layer** may be provided on one or both sides with a sealable polypropylene/polyethylene layer independent of other layers by coextrusion, hence resulting in pp/pa/pp/metal foil/pp/pa/pp, and further notes that her interpretation **is consistent** with what is understood in the packaging art, note specifically, the attached Muggli (USPN 5,968,663, commonly owned to Alusuisse Technology & Management) which also utilizes the same language as the commonly assigned Breitler et al and further exemplifies polyethylene/polypropylene “sealable layers” (c, c¹, e and e¹) on both sides of the plastic layers (d and d¹), which are present on both sides of a central metal layer (a) (Abstract; Col. 3, line 42-Col. 4, line 2; Col. 4, line 57-8.)

Further, as stated in Paper No. 16:

“...a fair reading of Brietler et al by one having ordinary skill in the art would nevertheless lead one skilled in the art to the interpretation that a sealable or polypropylene layer can be provided on **either or both sides of each polyamide layer** independent of other layers. Hence, given that the description at Column 4, lines 36-44 can be interpreted both ways by one having ordinary skill in the art, the Examiner maintains her position that the Brietler et al reference serves as a teaching with regards to the instant invention.”

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


mrj

February 21, 2003


Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700